UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

	)	
	)	
	)	**Misc. No. 99-197 (TFH)**
In re Vitamin Antitrust Litigation	)	**ALL CASES**
	)	**MDL No. 1285**
	)	
	)	

MEMORANDUM OPINION

I. Introduction

Pending before the Court is Plaintiffs' Motion to Compel Jurisdictional Discovery, Defendant BASF Corporation's Motion for a Protective Order, and the oppositions and reply thereto. By Order dated December 18, 1998, after Defendants filed a motion to dismiss for lack of personal jurisdiction, the Court granted Plaintiffs' motion for discovery on the issue of personal jurisdiction over foreign Defendants BASF AG, Rhone-Poulenc S.A., and F. Hoffmann-La Roche Ltd. The parties disagree as to what the nature and scope of that discovery should be.

The Court has referred to a Special Master "[t]he scope of and procedures for discovery (if any) that is appropriate and necessary so that the Court may resolve foreign defendants' pending and additional motions to dismiss based upon lack of jurisdiction and/or improper service of process." Thus, the majority of the issues raised in the pending motions are before the Special Master. As the Court announced at the July 21, 1999 status conference, however, it will determine the threshold legal issue of whether, pursuant to Section 12 of the Clayton Act, the relevant forum on which to analyze Defendants' contacts for purposes of personal jurisdiction is the District of Columbia or the United States as a whole.

As the parties are aware, relying on Frederick Cinema Corp. v. Interstate Theatres Corp., 413

F.Supp. 840, 841-42 n.1 (D.D.C. 1976), this Court held in Chrysler Corp. v. General Motors Corp., 589 F.Supp. 1182, 1195, that "[s]ection 12 essentially is a long-arm statute which permits service of process in a non-forum district, so long as the venue provision is met." This reading of Section 12 would require sufficient contacts in the District of Columbia for personal jurisdiction to stand in this case. In the fifteen years since Chrysler was written, however, the overwhelming majority of courts that have considered this issue have interpreted Section 12 differently. The U.S. Court of Appeals for the Ninth Circuit, the only court of appeals to address the issue to date, held that the service of process provision in Section 12 is not limited by the venue provision. See Go-Video, Inc. v. Akai Elec. Co., Ltd., 885 F.2d 1406, 1408-13 (9th Cir. 1989); see also Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d 1326, 1340-41 (2d. Cir. 1972) (analogous service of process provision of the Securities Exchange Act not limited by venue provision). A number of district courts have followed the logic of the Go-Video holding. See Daniel v. American Bd. of Emergency Med., 988 F.Supp. 127, 198-99 (W.D.N.Y. 1997) (the interpretation of the Go-Video court adopted as the "better reasoned authority"); Dee-K Enterprises, Inc. v. Heveafil SDN, 982 F.Supp. 1138, 1144 (E.D.Va. 1997) (personal jurisdiction found on the basis of Section 12 while venue based on other provisions); Icon Indus. Controls Corp. v. Cimetrix, Inc., 921 F.Supp. 375, 377-82 (W.D.La. 1996) ("The most reasonable construction of the statute is that the phrase 'process in such case' refers to '[a]ny suit, action or proceeding under the antitrust laws against a corporation'"); see also General Elec. Co. v. Bucyrus-Erie Co., 550 F.Supp. 1037, 10421-42 (S.D.N.Y. 1982) ("Section 12 venue . . . is not a predicate to the availability of personal jurisdiction"). The Court finds that these cases present a convincing analysis as to prior caselaw, the purpose and history of the Clayton Act, the structure of Section 12, and the relationship of venue statutes generally. Therefore, the Court concludes that it is

appropriate to use Defendants' contacts with the United States as a whole to analyze whether the Court has personal jurisdiction over any of the Defendants.[1]

II. Discussion

Plaintiffs assert that the Court should use nation-wide contacts to analyze the personal jurisdiction issue. Plaintiffs base this argument on Section 12 of the Clayton Act, which provides:

> Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

15 U.S.C. § 22.[2] The second clause of Section 12 authorizes nationwide, and even worldwide, service of process on foreign defendants in antitrust suits. As Plaintiffs correctly point out, it is generally true that "when a federal court is attempting to exercise personal jurisdiction over a defendant in a suit based on a federal statute providing for nationwide service of process, the relevant inquiry is whether the defendant has had minimum contacts with the United States." Busch v. Buchman, 11 F.3d 1255, 1258 (5th Cir. 1996); see also United States Sec. and Exch. Comm'n v. Carillo, 115 F.3d 1540, 1543 (11th Cir. 1997); In re Application to Enforce Admin. of Subpoenas of

---

[1] As Justice Frankfurter once remarked, "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." Henslee v. Union Planters Nat. Bank & Trust Co., 335 U.S. 595, 600 (1949).

[2] Because Defendants are foreign corporations, venue in the District of Columbia is appropriate pursuant to the Alien Venue Act. See 28 U.S.C. § 1391(d) ("An alien may be sued in any district.) Defendants concede that the Alien Venue Act provides a statutory basis for venue over a foreign defendant that is independent of Section 12. See Defendant F. Hoffman-La Roche Ltd.'s Opposition at 11 n.9. Thus, the first clause of Section 12 is not at issue in this case.

SEC v. Knowles, 87 F.3d 413, 417 (10th Cir. 1996); Go-Video, Inc. v. Akai Elec.Co., Ltd., 885 F.2d at 1414-15. Plaintiffs argue that Section 12 authorizes worldwide service of process in all antitrust proceedings because the language authorizing worldwide service of process "in such cases" refers back to the earlier phrase "[a]ny suit, action, or proceeding under the antitrust laws."

Defendants do not contest the general rule that contacts in the United States is the proper focus of jurisdictional analysis when a statute provides for nationwide (or worldwide) service of process. They instead maintain that first provision of Section 12 governing venue has limited the application of the general rule. In particular, Defendants argue that the language of Section 12 that allows worldwide service of process only "in such cases" means that the process provisions may be used only in those cases in which the entire initial venue provision has been satisfied. Under Defendants' reading, worldwide service of process would be authorized only after the Court finds that Defendants are inhabitants of, may be found in or transact business in the District of Columbia. Defendants therefore contend that the Court must look to Defendants' contacts with the District of Columbia under either the venue provision of Section 12 or traditional jurisdictional analysis under the D.C. long arm statute.

The Court concludes that Plaintiffs' proposed interpretation of the statute is more in keeping with the language and history of Section 12 and is supported by the weight of authority. First, and most importantly, the most natural reading of Section 12 dictates that the term "in such cases" refers to the phrase "[a]ny suit, action, or proceeding under the antitrust laws." When the word "such" is used to modify a noun, it is assumed to refer to the noun or its synonym, and any other dependent modifiers, as they appeared earlier in the text. See General Elec. v. Bucyrus-Erie, 550 F.Supp. at 1042 n.7 (citing WEBSTER'S THIRD INT'L DICTIONARY (unabr. ed. 1963)). In Section 12, "such"

modifies the noun "cases," which in turn corresponds with the statute's earlier reference to "[a]ny suit, action, or proceeding" and the modifying prepositional phrases "under the antitrust laws" and "against a corporation." The remainder of the venue provision of Section 12 does not modify the nouns "suit, action, or proceeding" and therefore should not be incorporated into the requirements for service of process. See id. ("Applying this rule to section 12, 'in such cases' would refer to 'any suit, action, or proceeding under the antitrust laws against a corporation,' and not to anything else in section 12's first clause").[3]

In addition, this interpretation of Section 12 is more consistent with the limited legislative history of the Clayton Act. The legislative history of the Clayton Act provides little insight into the proper interpretation of the portion of Section 12 governing service of process. The service of process provision was added without debate or objection after the venue provision already had been drafted, see 51 CONG. REC. 14,324 (1914), and Congress provided no indication of whether it intended the service of process provision to be limited by the provisions of the venue provision. See Go-Video, Inc. v. Akai Elec.Co., Ltd., 885 F.2d at 1410. The venue provision, on the other hand, generally is interpreted to be intended to expand of the reach of antitrust laws. See, e.g., United States v. Scophony Corp., 333 U.S. 795, 806-08 (1948) (the venue provision of Section 12 "was

---

[3] Defendants' argument under the "normal interpretative rule of the last antecedent" also fails. Defendants maintain that this rule requires the Court to read the phrase "in such cases" to refer directly to the preceding phrase (the venue language) and not any earlier phrase. To read the phrase "in such cases" to apply to any prior noun or nouns in the venue provision other than "[a]ny suit, action, or proceeding," however, would impair the meaning of the sentence. See Defendant F. Hoffman-La Roche Ltd.'s Opposition at 13 n.10 (quoting SUTHERLAND STAT. CONST. § 47.33 (5th ed. 1992)) ("The last antecedent is the last word, phrase or clause that can be made an antecedent without impairing the meaning of the sentence").

enacted . . . to enlarge the jurisdiction given by § 7 of the Sherman Act over corporations . . ."); Go-Video, Inc. v. Akai Elec.Co., Ltd., 885 F.2d at 1410-11 ("[C]ourts have viewed [Section 12's] main contribution to be its expansion of the bounds of venue"). It would be inconsistent with the expansive legislative purpose of the venue provision for this Court to read it in a way that would restrict the ability of individuals to serve defendants in antitrust lawsuits and thereby bring antitrust lawsuits.

III. Conclusion

The Court concludes that, pursuant to Section 12 of the Clayton Act, the relevant forum on which to analyze Defendants' contacts is the United States as a whole. This threshold legal issue being determined, the Court will refer the remaining issues in Plaintiffs' Motion to Compel Jurisdictional Discovery and Defendant BASF Corporation's Motion for a Protective Order to the Special Master.

July _____, 1999

Thomas F. Hogan
United States District Judge